No. 83-812

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

GEORGE C. WALLACE, et al.,

Appellants,

v.

ISHMAEL JAFFREE, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* LOWELL P. WEICKER, JR. IN SUPPORT OF APPELLEES

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MOTION TO FILE BRIEF OF *AMICUS CURIAE* LOWELL P. WEICKER, JR.

Amicus Lowell P. Weicker, Jr. moves for leave to file the attached brief *amicus curiae*. In support of this Motion, he cites the following:

1. The parties to this litigation have consented to the filing of this brief *amicus curiae*. Their letters have been filed with the Clerk of this Court.

2. *Amicus* has been an elected member of the United States Congress for sixteen years, serving as United States Senator for the past fourteen years. During his tenure in Congress there have been numerous legislative attempts to circumvent the constitutionally mandated separation of church and state, which attempts have been similar in purpose and effect to the Alabama statute at issue in this case. The history and purpose of the Establishment Clause of the First Amendment has been thoroughly examined and scrutinized during the course of the

extensive Congressional debates on such legislative proposals. *Amicus*, who has frequently led the effort to preserve the Constitutional safeguards established by our founding fathers, wishes to provide to this Court, for its review, the background leading to the adoption of the First Amendment.

Further, *amicus* wishes to provide this Court with the atmosphere of religious extremism which currently exists in this country. This atmosphere poses a severe threat to the harmony of this nation. For this reason, it is especially important that this Court remains sensitive to the reasons for, and the principles espoused in, the establishment by our founding fathers of the wall between church and state—which wall must remain inviolate to protect the government and its people from the divisiveness of religious entanglement in secular matters and further to protect religion from governmental interference.

3. In addition, *amicus* is an elected representative of the State of Connecticut. As such, he is concerned with the failure of the *amicus curiae* brief filed by the Attorney General of the State of Connecticut to reflect accurately the views of the people of Connecticut who strongly believe in the freedom of religion as guaranteed by the Constitution.

Therefore, because *amicus* has a substantial interest and background in the constitutional issues involved in this case and because his brief provides a perspective on the issues before this Court which has not been presented in the other briefs filed in this case, this motion for leave to file brief *amicus curiae* should be granted.

Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*

Amicus has been an elected member of the United States Congress for sixteen years, serving as United States Senator for the past fourteen years. During his tenure in Congress there have been numerous legislative attempts to circumvent the constitutionally mandated separation of religion and government. In large part, these attempts have been similar in purpose and effect to the Alabama statute at issue in this case.

Amicus has led the Congressional efforts to preserve the Constitutional safeguards established by our founding fathers from legislative undermining. The history and purpose of the First Amendment have been thoroughly examined and scruti-

nized during the extensive Congressional debate on these proposals.

Amicus wishes to provide to this Court, for its review, the extensive background leading to the establishment of "a wall of separation between church and state." *Reynolds* v. *United States*, 98 U.S. 145, 164 (1879). Further, *amicus* wishes to provide this Court with the atmosphere of religious extremism which currently exists in this country. This atmosphere poses a severe threat to the harmony of this nation. It was out of this concern that the United States Senate recently reaffirmed the absolute separation between church and state by rejecting a proposed constitutional amendment to breach the wall. *See* 130 *Cong. Rec.* S2901 (daily ed. March 20, 1984).

In addition, *amicus* is an elected representative of the State of Connecticut. As such, he is concerned with the failure of the *amicus curiae* brief filed by the Attorney General of the State of Connecticut to reflect accurately the views of the people of Connecticut who firmly espouse the notion of freedom of religion as guaranteed by the United States Constitution.[1]

SUMMARY OF ARGUMENT

It is the position of the *amicus* that the wall of separation between church and state must remain inviolate to protect the government and the American people from the divisiveness of religious entanglement in secular matters and further to protect religion from governmental interference.

The First Amendment was enacted in response to religious persecutions preceding and contemporaneous with the adoption of the Bill of Rights. Dominant religious groups utilized the power of government to persecute members of minority sects and to wage bloody religious wars. Official religious intolerance continued in this country well into this century,

1. Brief of *Amicus Curiae*, State of Connecticut (hereinafter referred to as the "Connecticut Brief").

and, as evidenced by the current resurgence of strident religious fervor in this country and the bloodshed in Northern Ireland and Beirut, Lebanon, the religious extremism necessitating the establishment of the wall of separation continues to this day.

The Eleventh Circuit in the case at bar properly recognized that the First Amendment was intended to create a complete and permanent separation between religious activity and civil authority. *Jaffree* v. *Wallace*, 705 F.2d 1526, 1530-32 (11th Cir. 1983). Because the Alabama "silent prayer" statute, Ala. Code §16-1-20.1, was intended to advance religion, the Court correctly concluded that the statute impermissibly violated the Establishment Clause. *Jaffree* v. *Wallace*, 705 F.2d at 1535-36.

Based upon the history and purpose of the First Amendment, and for the reasons set forth in the brief of the Appellees and the *amici* brief of the American Civil Liberties Union *et al.*, the *amicus* urges this Court to affirm the judgment of the Eleventh Circuit.

ARGUMENT

The First Amendment of our Bill of Rights provides that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

U.S. Const. amend. I. In adopting these sixteen words, our founding fathers summarily rejected a centuries-old tradition of church-state entanglement and erected a "high and impregnable" wall between church and state. *Everson* v. *Board of Education*, 330 U.S. 1, 18 (1947). For Jefferson and Madison, the authors of this Amendment, "religious freedom was the crux of the struggle for freedom in general." *Id.* at 34 (Rutledge, J., dissenting).

The centuries preceding the settlement of America were replete with conflicts between the papacy and European monarchs, bloody religious wars, persecution of religious minorities and excesses of state supported religion. *See* L.

Pfeffer, *Church, State and Freedom* 16-30 (1967) (hereinafter cited as "*Pfeffer*"); A. Stokes & L. Pfeffer, *Church and State in the United States* (1964).

Many of America's earliest settlers came to this country either as the result of religious persecution or out of motivation to pursue their religious beliefs. Nonetheless, many of the early colonies set up church-state systems and practiced religious persecution. The Puritans who colonized Massachusetts established their religion as the state religion and did not tolerate dissent. T.J. Wertenbaker, *The Founding of American Civilization: The Middle Colonies* 166, 189 (1963). New Jersey afforded full religious liberty only to Protestants, while Maryland and Delaware basically limited religious freedom to Christians. Connecticut and New Hampshire established the Congregational Church as the government church while Virginia established the Anglican religion and South Carolina established the Protestant religion. In Georgia, Catholics were barred from public office. R.A. Rutland, *The Birth of the Bill of Rights 1776-1791* 43-90 (1955); Marnell, *The First Amendment* 49-72 (1964). Only Pennsylvania and Rhode Island tolerated religious dissent. *Pfeffer* at 84-90.

By the time of the Revolutionary War, however, a combination of factors had produced the prevalent sentiment that government had no rightful power to interfere in the domain of religion. Among other practical considerations were the adoption of the Act of Toleration of 1689 in England,[2] diversity of religious sects in America,[3] the lack of formal church

2. The Act of Toleration conferred upon English Protestants the right to hold public services. The Act did not extend to Catholics or Unitarians. The Anglican Church retained special privileges. *Pfeffer* at 93.

3. Members of varied faiths united in opposition to religious persecution and government taxation for religious purposes. *See Everson* v. *Board of Education*, 330 U.S. 1, 10-11 (1947). However, it should be noted that this diversity was primarily among Protestant sects. At the time of the Revolutionary War, there were only 25,000 Catholics and 2,000 Jews of a total population of 2.5 million in the colonies. 1 R. Hofstadter, W. Miller & D. Aaron, *The American Republic* 109 (1959).

affiliation[4] and the growth of trade and commerce. *Pfeffer* at 91-97; *see generally* A. Stokes & L. Pfeffer, *Church and State in the United States* 3-103. Of equal importance were the examples of religious freedom and separation provided by Rhode Island and Pennsylvania, under the leadership of Roger Williams and William Penn, respectively, and the influence of John Locke and his social contract theory.[5] *Pfeffer* at 98-103.

Virginia—lead by Thomas Jefferson and James Madison—was the first colony to completely sever the relationship between church and state. As such, Virginia served as the model for the development of religious freedom. The works of Jefferson and Madison provided the basis for the First Amendment and give insight into the framers' purposes and intent in adopting this guarantee of religious freedom.

Virginia's first constitution, adopted in 1776, contained a guarantee of religious freedom, drafted by Madison, which provided that:

> . . . [R]eligion . . . can be directed only by reason and conviction, not by force or violence; and therefore, all men are equally entitled to the free exercise of religion according to the dictates of conscience.

Pfeffer at 107. This was soon followed by repeal of laws requiring payment of tithes to the state established church and, in 1779, repeal of laws requiring members of the established church to contribute to their own ministry. *Id.* at 107-9.

4. In New England, the most religious section of the colonies, only one in eight people were church members. W.W. Sweet, *Religion in Colonial America* 229 (1942). It is believed that only seven percent of the population were church attenders when the Bill of Rights was adopted in 1791. F. Littell, *From State Church to Pluralism* 32 (1962).

5. In his *Letter Concerning Toleration*, Locke wrote that "the care of souls cannot belong to the civil magistrate because his power consists only in outward force, but true and saving religion consists in the inward persuasion of the mind . . . ." *Pfeffer* at 102.

In 1779, Jefferson introduced his "Bill for Establishing Religious Freedom." This Bill, which was enacted in 1786, was premised on the principle that "the opinions of men are not the object of civil government, nor under its jurisdiction",[6] and provided, in pertinent part, that:

> no man shall be compelled to frequent or support any religious worship, place or ministry whatsoever . . . .

II *The Writings of Thomas Jefferson* 237-39 (P.L. Ford ed. 1892). As Jefferson later observed, the actions of the Virginia legislature in passing this Bill gave "proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and the Mahometan, the Hindoo, and infidel of every denomination." I *The Writings of Thomas Jefferson* 62 (P.L. Ford ed. 1892).

In 1784, legislation was proposed in the Virginia Assembly to require all persons to pay an annual contribution for the support of a Christian church or denomination designated by the taxpayer, or, in the alternative, for education in general. This "Bill Establishing a Provision for Teachers of the Christian Religion" was based upon the concept that all men should be required to support Christianity because it was beneficial to the general welfare. N.J. Eckenrode, *The Separation of Church and State in Virginia* 86-102 (1910).

In response to this Bill, Madison wrote his historical "Memorial and Remonstrance Against Religious Assessments." *See Everson* v. *Board of Education*, 330 U.S. at 36-38 (Rutledge, J., dissenting). Predicated upon the principle that government lacks jurisdiction over religious matters, and reflecting the widely held beliefs of the day, the Remonstrance was "a broadside attack on all forms of 'establishment' of religion, both general and particular, nondiscriminatory or selective." *Id.* at 37; *see Pfeffer* at 113. As a result of Madison's

6. Although this phrase was deleted from the statute as passed by the Virginia legislature in 1786, it reflects Jefferson's philosophy and the tenor of the principles espoused in the Bill.

Remonstrance, the assessment bill was overwhelmingly defeated. *Pfeffer* at 115. Jefferson's "Bill for Establishing Religious Freedom" was enacted shortly thereafter. *Id.*

It was against this backdrop that the Constitution was drafted in 1787. Among its provisions was Clause 3 of Article VI, which provides that although federal and state office holders are required to take an oath to support the Constitution,

> "no religious test shall ever be required as a qualification to any office or public trust under the United States."[7]

This phrase, which was unanimously approved[8], was intended "to cut off for ever *every pretence of any alliance* between church and state in the national government." III J. Story, *Commentaries on the Constitution of the United States* 705 (Boston 1833) (emphasis added). It reflected the framers' recognition

> "of the dangers from [church-state entanglements], marked out in the history of other ages and countries; and not wholly unknown to our own. They knew, that bigotry was unceasingly vigilant in its strategems, to secure to itself an exclusive ascendancy over the human mind; and that intolerance was ever ready to arm itself with all the terrors of the civil power to exterminate those, who doubted its dogmas, or resisted its infallibility."

Id.

However, this prohibition against religious discrimination alone did not satisfy the American people, who were commit-

7. This phrase was not included in the original draft of the Constitution, but was proposed by General Charles C. Pinckney, a South Carolina Episcopalian. H.P. Richardson, *The Journal of the Federal Convention of 1787 Analyzed* 126, 134, 195 (1899).

8. Unlike the phrase respecting a religious test, the clause requiring an oath to support the Constitution was not unanimously approved. III J. Story, *Commentaries on the Constitution of the United States* 702 n.1 (Boston 1833).

ted to the principle that government was to have no jurisdiction over religious matters. New York, Virginia and New Hampshire ratified the Constitution, but proposed amendments for a bill of rights, including provisions for freedom of religion and disestablishment. North Carolina and Rhode Island refused to ratify the Constitution until a bill of rights, including religious freedom and disestablishment, was adopted. R. Butts, *The American Tradition in Religion and Education* 72 (1950); *Pfeffer* at 125-27.

Madison, honoring his commitment, introduced his proposals for the bill of rights in 1789. Drawing upon the principles enumerated in his Remonstrances, Madison drafted the amendment concerning religious liberties to bar "any sort of federal support for religion." III Brant, *James Madison, The Father of the Constitution* 271 (1950). He clearly intended the prohibitions contained in the First Amendment to be absolute and successfully labored in committee to ensure that the language finally approved met his requirements.[9] Thus, writing shortly after Congressional passage of the First Amendment, Madison was able to state that "government is proscribed from interfering, *in any manner whatsoever*, in matters respecting religion." *Id.* at 272 (emphasis added).

Similarly, Jefferson—who conferred with Madison throughout this period—viewed the separation between religion and government as absolute. As President, he refused to proclaim days of public thanksgiving because of "the provision that no law shall be made respecting the establishment or free exercise of religion." 11 *Jefferson's Writings* 428-30 (1905).

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9. In securing passage of the First Amendment, Madison successfully defeated a proposal which would have permitted government support of churches and church schools. *See* III Brant, *James Madison, The Father of the Constitution* 271 (1950). Although it is unclear whether Madison drafted the language which was finally adopted, it is clear that the First Amendment as approved reflected his beliefs and met with his approval. *Id.* at 271-72. *See also* Cahn, *The "Establishment of Religion" Puzzle*, 36 N.Y.U. L.Rev. 1274, 1280 (1961).

In an attempt to fully explicate his position on the relationship between religion and government Jefferson wrote to the Danbury, Connecticut Baptist Association[10] in 1802 that:

> . . . religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free speech thereof," thus *building a wall of separation between church and state*.

The Complete Jefferson 518-19 (S.K. Padover ed. 1943) (emphasis added).[11]

The First Amendment, thus, reflects its framers' intent that an absolute barrier be established between government and religion. It prohibits government involvement in religious matters, thereby preventing the domination of church by the state, while also barring religious involvement in the business of government, thereby preventing the domination of the state by the church. *See Pfeffer* at 137.

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10. The Congregational Church was the state established church in Connecticut until 1818. W.W. Sweet, *The Story of Religion in America* 190 (1973). Religious intolerance in the state was so great that in 1820 the Connecticut Supreme Court stated that a person who believed "that government had no . . . right to provide by law for the support of the worship of the Supreme Being" was "odious and detestable." *Stow* v. *Converse*, 3 Conn. 325, 342 (1820). For examples of religious intolerance in America which lasted well into this century, *see* Swancara, *Iniquity in the Name of Justice*, 33 U.Va. L.Rev. 415 (1932).

11. Jefferson clearly gave deep thought to this letter, which he felt afforded him an opportunity to state his "condemnation of the alliance between church and state, under the authority of the Constitution." VIII *The Writings of Thomas Jefferson* 129 (P.L. Ford ed. 1892). The letter was reviewed by Levi Lincoln, his Attorney-General, prior to being sent to the Baptist Association. *Id.*

These principles which guided Jefferson and Madison in drafting the First Amendment provide the appropriate framework for the analysis of the Alabama "silent prayer" statute, Ala. Code § 16-1-20.1, at issue in this case.

Today, nearly 200 years following the adoption of the First Amendment, the role of religion remains a divisive issue in this country.[12] The volatility of the religious issue is evidenced by the public reaction to this Court's decisions in *Engel* v. *Vitale*, 370 U.S. 421 (1962) and *Abington School District* v. *Schempp*, 374 U.S. 203 (1963), declaring that government sponsorship of prayer in public schools, even if nondenominational, violates the First Amendment.[13] These decisions removed from the school child the stigma of being a member of a religious minority and, together with this Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), have resulted in today's youth having a greater degree of tolerance and understanding for others.

The stigmatization of being singled out as a religious minority is quite traumatic. Justin Ross, an eight year old, recently wrote President Reagan:

> I am 8 years old and I live in Pittsburgh. I am Jewish. We lived in Canada because my dad had a job there, but we are American. I went to school in Canada. In my school we had to say a prayer.
>
> Some of the children stood in the hall instead of saying the prayer. Everybody thought they were bad. One boy

12. The volatility of the religious issue today in other parts of the world is attested to by the bloody religious fighting in Northern Ireland and Beirut, Lebanon.

13. *See, e.g.*, N.Y. Times, June 26, 1962 at 1, cols. 6-8, 16, col. 7; *id.*, June 27, 1962 at 1, col. 8, 20, col. 3; *id.* June 28, 1962 at 1, col. 4. The highly controversial nature of this issue is further evidenced by the fact that numerous religious groups have expressed "vigorous opposition to proposed constitutional amendments" concerning school prayer. 130 *Cong. Rec.* S2345-46 (daily ed. March 16, 1984) (statement by Sen. Danforth).

> told me that I was going to Hell. Please don't make people hate me because I am Jewish. I do not hate you because you are not Jewish. It made me feel terrible to say the prayer.

130 *Cong. Rec.* S2691-92 (daily ed. March 14, 1984). A child will bear this stigma forever:

> [I] was . . . brought up as a Protestant, but having a mother who was an Orthodox Jew . . . meant that I was very aware of what happened in our classroom in the small town in Lyndhurst, New Jersey . . . [T]here were many of us who felt just terribly out of it. I was one of them . . . . It has an impact forever. If you are a Jew, or you are a minority person, and you are in a classroom, and you are asked to participate in the Lord's Prayer, whether it be verbally, or whether it be by meditation, it has a negative, emotional impact, and you have to live through it to understand it.

18 Conn. H. Proc. Pt. 8, 1975 Sess. 3759 (statement by Rep. Ritter) (opposing Connecticut's "silent meditation" statute); *see also* 18 Conn. S. Proc. Pt. 4, 1975 Sess. 2459 (statement by Sen. Hansen) (school prayer requirement left "ugly scars").

Yet, despite the salutary effect of these decisions, there was a violent public outcry against them. Congressmen angrily denounced the Court's rulings[14] and proposed constitutional amendments to overturn the decisions. Sky, *The Establishment Clause, The Congress and the Schools: An Historical Perspective*, 52 U.Va. L.Rev. 1395, 1397-1401 (1966).

This furor over the role of religion continues to this day, fueled by the involvement of fundamental religious groups. *See, e.g.*, Note, *Rebuilding the Wall: The Case for a Return to the Strict Interpretation of the Establishment Clause*, 81 Colum. L.Rev. 1463, 1475 n.83 (1981). The President of the United States, who has advocated a constitutional amendment

14. *See, e.g.*, 108 *Cong. Rec.* 11672-76, 11707-13, 11755-61, 11755-80, 11839-46, 11968-72, 11977-79 (1962).

to overturn this Court's rulings,[15] recently stated that "religion and politics are necessarily related . . . [O]ur Government needs the Church." New York Times, Aug. 24, 1984 at A1, cols. 4-5. He further stated that those who oppose school prayer are "intolerant". *Id.* The Republican Party has adopted a national campaign platform advocating the "right to engage in voluntary school prayer." *Id.*, Aug. 22, 1984 at A18. Those who oppose these efforts are singled out for *ad hominem* attacks. *See, e.g.*, Washington Post, Aug. 16, 1984 at A1 (fundamentalist religious leader Rev. Jerry Falwell says Senator Weicker belongs "in the zoo in San Francisco" because of his opposition to New Right religious positions); 18 Conn. H. Proc. Pt. 8, 1975 Sess. 3767 (statement of Rep. Doran) ("What I am concerned about today is to see these Jews opposing" school prayer).

These remarks and actions reflect the increased stridency of religious groups advocating greater government involvement in religion. Their incendiary actions belie the claim that "the 'fears and political problems' that gave rise to the Religion Clauses [of the First Amendment] in the 18th century are of far less concern today." *Lynch* v. *Donnelly*, ___ U.S. ___, 52 U.S.L.W. 4317, 4322 (March 5, 1984); *Wolman* v. *Walter*, 433 U.S. 229, 263 (1977) (Powell, J., concurring and dissenting). Indeed, although these actions may be "distant . . . in [their] present form from the Inquisition [they] differ from it only in degree. The one is the first step, the other the last in the career of intolerance." Madison, "Memorial and Remonstrance Against Religious Assessments," in *Everson* v. *Board of Education*, 330 U.S. at 69 (Rutledge, J., dissenting). We must "take alarm at the first experiment on our liberties." *Id.* at 65.

The First Amendment has thus far withstood these frontal assaults. Religious zealots have been unable to amend the constitution to remove the "wall of separation between church and state" erected by our founding fathers. Indeed, earlier this

15. *See* S. Rep. No. 347, 98th Cong., 2d Sess. 26-27; S. Rep. No. 348, 98th Cong., 2d Sess 3.

year the United States Senate, after lengthy debate, rejected a proposed constitutional amendment to permit voluntary school prayer.[16]

Unsuccessful in their attempts to disassemble the First Amendment through constitutional amendment, religious groups have attempted to end-run the Constitution through legislation similar to the Alabama "silent prayer" statute.[17] The religious nature of the statute is plain on its face: there is no need to provide, by statute, time for "meditation" because all students now have the right—and ability—to pray, by themselves,[18] at any time of the day. Indeed, many students now pray before exams, athletic events and other "momentous occasions". Taken at face value, the statute does not provide the student with anything more than that which he or she is already able to do. Such statutes, thus, clearly have "the intent . . . to return prayer to the public schools . . . [and] the primary effect of advancing religion." *Jaffree* v. *Wallace*, 705

16. This recent debate in the United States Senate on the proposed school prayer constitutional amendment is indicative of the depth of the emotionalism concerning religion. *See* 130 *Cong. Rec.* S2290-315 (daily ed. March 5, 1984); *id.* S2343-56 (March 6, 1984); *id.* S2391- 403 (March 7, 1984); *id.* S2675-705 (March 14, 1984); *id.* S2771-82 (March 15, 1984); *id.* S2845-49 (March 19, 1984); *id.* S2879-904 (March 20, 1984).

17. During its debate on a proposed school prayer constitutional amendment earlier this year, the United States Senate defeated by a vote of 81-15 a proposed constitutional amendment to allow "individual or group silent prayer or silent reflection in public schools." 130 *Cong. Rec.* S2678-714 (daily ed. March 14, 1984); *id.* S2771-81 (daily ed. March 15, 1984). A constitutional amendment is the proper way to achieve what Alabama seeks to do in its "silent prayer" statute. *Amicus*, however, is opposed to such an amendment, for the reasons given in this brief and for the further reasons stated during Congressional debate on the proposed amendment.

18. "When you pray, go into a room by yourself, shut the door, and pray to your Father who is there in the secret place; and your Father who sees what is secret will reward you." Matthew 6:1.

F.2d at 1535. As such, the Alabama statute and its ilk violate the letter and intent of the First Amendment.[19]

In adopting the principle contained in the First Amendment that government does not have jurisdiction over religious matters, Jefferson and Madison were sensitive to the potential divisiveness of government entanglement with religion. The factors leading them to this tenet are every bit as relevant today as in the 18th century. Our founding fathers realized that such entanglement need not be blatant but could be subtle in nature. Therefore they advocated special vigilance against such seductive intrusions. In words equally applicable today, Jefferson stated:

> We ought with one heart and one hand to hew down the daring and dangerous efforts of those who would seduce the public opinion to substitute itself into . . . tyranny over religious faith.

19. Similarly, the objective of the Connecticut "Silent Meditation" statute, Conn. Gen. Stat. §10-16a, is the advancement of religion. As originally drafted, the statute provided for "silent prayer." 18 Conn. H. Proc. Pt. 8, 1975 Sess. 3742. The original proposal plainly was "a proposal to have a voluntary silent prayer, or an opportunity for a voluntary silent prayer . . . in our school systems." *Id.* at 3752 (Rep. Hanlon). The intent was "to subvert the intention and the ruling of the Supreme Court." *Id.* at 3754 (Rep. Ahearn). The statute, as enacted, mandates the schools to provide a daily "opportunity to observe . . . silent meditation." Conn. Gen. Stat. §10-16a. Despite the semantical change, the "intent [was] nonetheless, still prayer." *Id.* at 4591-92 (Rep. Walsh); *see also id.* at 4603 (Rep. Ahearn) ("they mean prayer"); *id.* at 4612 (Rep. Sayre) ("we do intend to have prayer in public schools"); 18 Conn. S Proc. Pt. 4, 1975 Sess. 2448 (Sen. Ciccarello) ("the purpose of this bill is to promote prayer within the schools"); *id.* at 2449 (Sen. Schneller) ("this amendment retains in theory the original intent"); *id.* at 2459 (Sen. Hansen) ("we all know what the intent was, it was prayer"); *id.* at 2461-62 (Sen. Martin) ("why are my [colleagues] ashamed to have prayers in schools?"). Thus, the claims in the Connecticut Brief that the Connecticut statute has a secular purpose and neither advances nor inhibits religion are clearly erroneous. (Conn. Br. 5- 10).

F. Swancara, *Thomas Jefferson Versus Religious Oppression* 137 (1969).

The Alabama "silent prayer" statute is such an attempt to subtly circumvent the wall between religion and government. Yet, no matter how seductive it may be, the statute—as was found by the Eleventh Circuit—has as its objective the interjection of government into the realm of religion. However, as evidenced by the works of Jefferson and Madison, our founding fathers firmly established that government has no jurisdiction in religious matters. Therefore, this attempt to breach the "high and impregnable" wall between church and state must be rejected. *Everson* v. *Board of Education*, 330 U.S. at 18.

For the foregoing reasons, and for the reasons set forth in the Appellees' brief and the *amici* brief of the American Civil Liberties Union *et al.*, this Court should affirm the judgment of the Eleventh Circuit holding the Alabama "silent prayer" statute unconstitutional.

CONCLUSION

Amicus joins Appellees in respectfully urging this Court to affirm the judgment of the Court of Appeals.

Respectfully submitted,

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* *Amicus* wishes to acknowledge the assistance of Randall M. Skigen, a student at Cornell Law School, in the research and preparation of this brief.